

Virginia Mining Issues Group

By Email and U.S. Mail

October 23, 2008

Ms. Shelley D. Williams
Regional TMDL Coordinator
Virginia Department of Environmental Quality
Southwest Regional Office
P.O. Box 1688
Abingdon, Virginia 24212

Bull Creek and Pound River TMDLs

Dear Ms. Williams:

The Virginia Mining Issues Group appreciates the opportunity to comment on the draft TMDL reports for Bull Creek in Buchanan County and the North and South Forks of the Pound River in Wise County. These drafts were released for public review on September 23 and 25, 2008, respectively. Since our comments on both drafts are identical, we offer them by way of this letter.

As you know, our Group is an *ad hoc* unincorporated association of mining stakeholders located throughout Virginia's coalfields. Our goal is to promote resource protection and water quality restoration through regulatory proceedings that are driven by sound science, as well as cost-effective and practical decision-making.

We have been especially active in the development and implementation of TMDLs, beginning with our "cooperative solution" for Straight, Callahan and Russell Prater Creeks, as approved by the State Water Control Board in March 2006 and the U.S. Environmental Protection Agency in June 2006. This cooperative solution has subsequently been applied to a number of other coalfield TMDLs, including those for Knox and Pawpaw Creeks.

The draft Bull Creek and Pound River TMDLs reflect certain aspects of our cooperative solution, but omit others. By way of example and not limitation, neither report reflects the following key protection for existing permittees in the relevant TDS TMDL calculation:

Given the limited amount of data available for parsing the anthropogenic load among known sources, no attempt was made to determine specific load reduction requirements for specific sources. The waste load allocation was thus established based on overall reductions for the watershed. This approach established an equitable WLA and LA but did not establish a required reduction from permitted sources. At this time, there is not enough water quality and other data on the

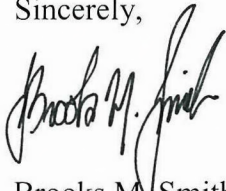
Ms. Shelley D. Williams
October 23, 2008
Page 2

permitted sources to calculate or model with confidence an existing TDS loading for these facilities. During implementation, the existing permitted sources will be monitored to determine their existing load. Needed reductions cannot be calculated until those data have been collected.

We are extremely concerned by these and other deviations from our cooperative solution approach, and we urge DEQ adopt the entire cooperative solution in the final TMDLs. Needless to say, we would be pleased to meet with you to discuss our comments in more detail, or to provide any additional information that may facilitate your efforts to derive legally defensible and appropriate TMDLs.

Please feel free to contact me (bsmith@hunton.com / 804-787-8086) with questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Brooks M. Smith". The signature is fluid and cursive, with the first name "Brooks" being the most prominent.

Brooks M. Smith
Common Counsel

cc: Members of the Virginia Mining Issues Group